IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2007 OF 2007

Shikalgar Samajache Paristhan & Anr. ....Petitioners

V/s

Shri Mangesh Vajir Rajput (Shikalgar)
and Ors. .....Respondents.

Mr. U.R. Mankapure for the Petitioner.

Mr. A.M. Kulkarni for Respondent Nos. 1 to 4.

CORAM: V.M. KANADE, J.
DATE : 6th July, 2007

P.C.:

1. Heard the learned Counsel appearing on behalf of the Petitioners and the learned Counsel appearing on behalf of Respondent Nos. 1 to 4.

2. Petitioners are a Trust registered under the Bombay Public Trust Act, 1950. Petitioners take exception to the order passed by the Joint Charity Commissioner dated 20/09/2006 whereby the application filed by the President of the Petitioners seeking injunction under section 41(E) of the Bombay Public Trust Act, 1950 was rejected. It was alleged in the application that the Deity Nalsab Peer Panja is the Deity of whole Shikalgar community and that the property in question was purchased by six persons from Shikalgar community for Nalsab Peer. However, since the Trust was not registered, the property was

purchased in the name of these six persons and Deity was temporarily shifted in the house of one Vajjir Shikalgar for the purpose of day-to-day pooja. It was, therefore, alleged that the property which was in possession of the respondents - opponents actually belongs to the Trust. Respondents opposed this application. The Joint Charity Commissioner, however, rejected the application. Being aggrieved by the said order, Petitioners have filed this Petition under Article 227 of the Constitution of India.

3. The learned Counsel appearing on behalf of Petitioners submitted that the Joint Charity Commissioner had erred in coming to the conclusion that Petitioners had suppressed material facts from the Joint Charity Commissioner while making an application under section 22 for effecting change and had fraudulently obtained the change report. He submitted that the Joint Charity Commissioner also had erred in holding that the Petitioners had suppressed the fact that the opponents were in possession of the said property. He invited my attention to the application and also reply filed by Respondents and the public notice which was issued by Petitioners herein. He submitted that, even in the suit, which was filed by six persons against third party, the fact that the property was temporarily given was admitted by Respondent No.3 who was original Plaintiff in the said suit. He submitted that the said suit was decreed. He then invited my attention to the findings recorded by the Joint Charity Commissioner on this question. He submitted that this finding was, therefore, clearly perverse. He then submitted that the Joint Charity Commissioner had erred in holding that the Joint Charity Commissioner did not have

power to issue the order of mandatory injunction while considering the application under section 41(E). He submitted that it was always open for the Court to mould a particular relief in order to protect the property from being wasted. He submitted that, therefore, the impugned order was liable to be set aside.

3. On the other hand, Mr. Kulkarni, the learned Counsel appearing on behalf of Respondents, submitted that the suit which was filed and on which reliance was placed by the Counsel appearing for the applicants was in respect of certain other property. He invited my attention to the description of the property in the application which was taken out by Petitioners herein before the Joint Charity Commissioner. He also submitted that the Joint Charity Commissioner had considered the scope of provisions of Section 41(E) and had observed that, even otherwise, no case was made out by Petitioners for grant of mandatory injunction particularly when the property was in possession of Respondents for a very long time. He also invited my attention to the fact that the property did not belong to the Trust and, therefore, he had no right to claim an order of injunction.

4. In my view, submissions made by the learned Counsel appearing on behalf of Petitioners cannot be accepted. The Joint Charity Commissioner, while considering the application under section 41(E), no doubt, can pass an order of injunction to suit various circumstances and take an appropriate view in the facts and circumstances of each case. However, in the present case, admittedly, property in question was in possession of Respondents. That being the position, the

question of granting a mandatory order of injunction in such application does not arise and the Joint Charity Commissioner, therefore, after considering the facts of this case, has refused to grant mandatory injunction. I do not see any reason to interfere with the order passed by the Joint Charity Commissioner while exercising writ jurisdiction under Article 227 of the Constitution of India. Writ Petition, therefore, is dismissed in limine.

5. It is clarified that it is open for Petitioners to take out appropriate proceedings, seeking substantive reliefs before appropriate forum. If such an application is made, the same may be decided on merits without influenced by the observations made by the Joint Charity Commissioner while disposing of the application of Petitioners under section 41(E) of the Bombay Public Trust Act, 1950.

(V. M. KANADE, J.)